



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

Case No.: 846-2013-21350

██████████,
Complainant,

v.

TYSON FOODS, INC.,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice has occurred. 910 IAC 1-3-2(b)

On April 2, 2013, ██████████ ("Complainant") filed a Complaint with the Commission against Tyson Foods, Inc. ("Respondent") alleging discrimination on the basis of national origin in violation of ██████████
██████████ the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter.

An investigation has been completed. Both parties have been given the opportunity to submit evidence. Based upon a full review of the relevant files and records and the final investigative report, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was subjected to disparate discipline because of his national origin. Complainant must show that 1) the employee engaged in prohibited conduct similar to that of a co-employee of another national origin and 2) the disciplinary measures enforced against him were more severe than those levied against his American co-worker.

It is evident that Complainant falls within a protected class by virtue of his national origin and it is undisputed that he suffered an adverse employment action when Respondent terminated his employment on February 15, 2013. Further, it is apparent that his American counterpart engaged in identical behavior; however, Respondent terminated Complainant for the same offense while it failed to discipline his American co-employee.



By way of background, Complainant was hired as an hourly general laborer on or about May 12, 2008. He was subsequently promoted to a Supervisor-Shipping position at Respondent's Logansport facility on or about July 12, 2009. At all times relevant to the Complaint, Respondent had a policy and procedure that required employees to report all accidents to their respective supervisors. On or about February 8, 2013, an employee injured himself while working on a machine. Witness testimony, including that of the injured employee himself, indicates that the employee informed both Complainant and an American supervisor about the incident and requested to go home instead of being examined by Respondent's medical personnel. Pursuant to Respondent's policy and procedure, all team members involved in a compensable injury are required to immediately submit to an alcohol/ drug screening; the injured employee informed both Complainant and the American supervisor that he had consumed marijuana earlier that day. Further, evidence including witness testimony demonstrates that both the Complainant and the American supervisor were on duty at the time of the injury. While Respondent alleges the American supervisor did not make the final decision to send the injured employee home, Complainant contends the he and the American supervisor mutually agreed to allow the employee to go home in contravention of Respondent's Drug and Alcohol Abuse Policy. Nonetheless, Respondent only terminated Complainant for the violation of policy, thus treating a similarly-situated American supervisor more favorably under identical circumstances. As such, Respondent's rationale for terminating Complainant while treating the American supervisor more favorably is unworthy of credence and is likely pretext for unlawful discrimination on the basis of national origin. As such, probable cause exists to believe that an unlawful discriminatory practice occurred in this instance.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

December 16, 2013
Date

Akia A. Haynes
Akia A. Haynes, Esq.,
Deputy Director
Indiana Civil Rights Commission